

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DARO WEILBURG,

Plaintiff,

-v-

5:24-CV-1189

BRENDAN RIGBY,
Officer of the Court

Defendant.

APPEARANCES:

OF COUNSEL:

DARO WEILBURG
Plaintiff, *pro se*
5701 East Circle Drive
Suite 138
Cicero, NY 13039

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On September 27, 2024, plaintiff Daro Weilburg (“plaintiff”), acting *pro se*, filed an action against defendants Carla Fitzgerald (“Fitzgerald”), Brendan Rigby (“Rigby”), and George D. Annas (“Annas”) (collectively, “defendants”) pursuant to 18 U.S.C. § 242, 18 U.S.C. § 505, 42 U.S.C. § 1983, and 42 U.S.C.

§ 1985. Dkt. No. 1. Plaintiff also filed an application to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 2.

On October 8, 2024, U.S. Magistrate Judge Mitchell J. Katz issued an Order on Report & Recommendation (“R&R”) granting plaintiff’s IFP application and recommending that: 1) plaintiff’s claims predicated on 18 U.S.C. § 242 and 18 U.S.C. § 505 be dismissed with prejudice; 2) plaintiff’s 42 U.S.C. § 1983 claims be dismissed with prejudice; 3) plaintiff’s 42 U.S.C. § 1985 claims against Rigby and Annas be dismissed with prejudice; and 4) that the remainder of the complaint be dismissed without prejudice. Dkt. No. 5. Plaintiff did not file any timely objections. This Court accepted Judge Katz’s R&R permitted plaintiff to file an amended pleading within thirty (30) days on October 25, 2024. Dkt. No. 7.

On November 27, 2024, plaintiff filed an amended complaint alleging a single claim against Rigby pursuant 42 U.S.C. § 1985.¹ Dkt. No. 8. On January 13, 2025, Judge Katz issued another R&R recommending that plaintiff’s amended complaint be dismissed for failure to state a claim. Dkt. No. 9. Plaintiff did not file any timely objections.

¹ In sum, the amended complaint asserts that Rigby is a defense attorney who was appointed to represent plaintiff with respect to a criminal proceeding commenced against him in 2023. Plaintiff’s amended complaint, liberally construed, alleges: (1) that Rigby conspired with court staff to forge a court order coercing the plaintiff into accepting a plea agreement to a crime he did not commit and; (2) that a court-appointed psychiatric examiner falsely manufactured a mental evaluation that was submitted to the Oneida City Court because plaintiff exercised his rights to freedom of the press and freedom of speech and would not plead guilty to a crime he did not commit. *See generally* Am. Compl.

Upon review for clear error, Judge Katz's R&R will be adopted in all respects. *See* FED. R. CIV. P. 72(b). Accordingly, plaintiff's amended complaint will be dismissed for failure to state a claim.

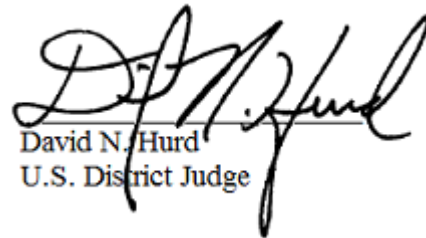
Therefore, it is

ORDERED that

1. Plaintiff's amended complaint (Dkt. No. 8) is DISMISSED without leave to amend.²

The Clerk of the Court is directed to terminate the pending motion, enter a judgment accordingly, and close the file.

IT IS SO ORDERED.



David N. Hurd
U.S. District Judge

Dated: February 26, 2025
Utica, New York.

² As discussed in the R&R, the Court afforded plaintiff the opportunity to amend his complaint, and he was still unable to associate defendant's alleged actions to any statutorily or constitutionally prohibited conduct. Dkt. No. 9 at 7. Accordingly, Judge Katz recommended dismissing the amended complaint, Dkt. No. 8, without further opportunity to amend. *Id.* This Court agrees, and therefore the amended complaint is dismissed without leave to amend.